

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:19-CV-00505-D

Aquestive Therapeutics, Inc.,

Plaintiff,

v.

**BioDelivery Sciences International,
Inc.,**

Defendant.

Order

Aquestive Therapeutics, Inc., alleges that BioDelivery Sciences International, Inc., has infringed on one of Aquestive patents through its production and sale of products called BELBUCA and BUNAVAIL. D.E. 1. Discovery began when the parties held their Rule 26(f) conference in May 2021¹ (D.E. 54), but it ground to a halt at the beginning of this year. *See* D.E. 79. Despite its outstanding discovery obligations, BioDelivery has produced nothing since late January. *See id.* Since BioDelivery's last production, the parties have met and conferred on the status of discovery multiple times. *See* D.E. 80.

In late July, Aquestive moved to compel BioDelivery to answer various requests for production and requests for electronically stored information. D.E. 78, 105. The court held two hearings in September to determine the cause for BioDelivery's delay. Although BioDelivery is in the middle of changing counsel, it offered no satisfactory justification for its eight-month failure to meaningfully participate in discovery. BioDelivery's new counsel claims that it can produce the

¹ *See* Fed. R. Civ. P. 26(d)(1) ("A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f)[.]").

responsive documents within 60 days. Taking this into consideration, the undersigned grants Aquestive's motion to compel and orders the following:

- BioDelivery will provide Aquestive with documents responsive to Aquestive's requests for production (*see* D.E. 81-3, 81-5) and requests for electronically stored information (*see* D.E. 81-20) within 60 days from the date this order issues.
- BioDelivery will begin its rolling production of relevant documents within 40 days from the date this order issues.

The court reserves the issue of sanctions for a forthcoming order.

Dated: October 3, 2022



Robert T. Numbers, II
United States Magistrate Judge